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by civil warrant, or it can be recovered in a criminal proceeding before the justice. If not, then we have this anomalous condition of things: That where a fine is imposed in a misdemeanor case which cannot exceed \$20, the justice has no criminal jurisdiction of the offense, unless the offender be first indicted or presented in court and the case certified to the justice, as provided by section 4106 of the Code. This manifestly cannot be so, since a justice is given exclusive original jurisdiction of all misdemeanors by that section, except in a few cases otherwise specially provided for. Section 4106.

The penalty imposed for the violation of sections 3799, 3805a, 3862, 3863, and 3865 cannot exceed \$5. In only one of them (3805a) is the offense declared in terms to be a misdemeanor. No indictment can be made for the violation of either. If the view taken by the court be correct, the violator of section 3805a alone can be prosecuted criminally, and the fine imposed for violating the other four statutes can be recovered only by a civil warrant. A conclusion which leads to such results it seems to me must be erroneous.

I am of opinion that there is no error in the judgment of the circuit court of the city of Richmond, and that it should be affirmed.

HARRISON, J., concurs.

See note at end of following case.

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PUCKETT v. COMMONWEALTH.

June 13, 1907.

[57 S. E. 591.]

**1. Sunday—Forfeiture for Working—Persons Liable.**—Under Code 1904, § 3799, providing that if a person on the Sabbath be found laboring at any trade or calling, or employ his servants in labor, he shall forfeit \$2 for each offense, the employee so laboring, as well as the employer, is liable for the forfeiture.

Buchanan and Harrison, JJ., dissenting.

Error to Circuit Court, Henrico County.

Puckett was convicted for working on Sunday, and brings error. Reversed, and warrant quashed.

*Wyndham R. Meredith*, for plaintiff in error.

*Robert Catlett*, for the Commonwealth.

PER CURIAM. By consent this case was heard with the case of *Wells v. Commonwealth*, 57 S. E. 588, and is controlled by the decision therein.

It is contended that, upon a correct interpretation of section 3799 of Virginia Code 1904, the employer, Wells, is liable for the forfeiture prescribed for a violation of the section, and not the employee, Puckett.

We are of opinion that the statute is not susceptible of that construction, but that any person who violates its provisions is amenable to the forfeiture imposed. But, for the reasons set forth in the opinion handed down at the present term in the former case, the judgment of the circuit court in this case must be reversed and the warrant quashed.

BUCHANAN, J. (dissenting). For reasons given in the dissenting opinion in *Wells v. Commonwealth*, 57 S. E. 588, I dissent from the opinion of the court in this case; and in this dissent HARRISON, J., concurs.

#### Note.

The decision in these cases, that a violation of § 3799 providing that one who labors, etc., on the Sabbath shall forfeit \$2, is not a misdemeanor, will come as a great surprise not only to lawyers but to laymen generally. Our belief that this was a criminal law proceeding, as Judge Buchanan points out, primarily from the fact that it is classed by the revisors of the Code under the general title "Crimes and Punishments;" this, however, is not conclusive, for it will be recalled that, in the McCue Case, 103 Va. 870, 49 S. E. 623, it was held, that § 3351 of the Code allowing a party whose witness has unexpectedly proved adverse, to prove his prior inconsistent statements, applies to criminal as well as civil cases, notwithstanding the statute is found in the Code under the title of "Proceedings in Civil Cases." The court said that the mere collocation of that section cannot be permitted to override every other consideration, and require the courts to confine it to civil cases. So powerful is the reasoning, and so irresistible are the conclusions, of the majority and minority opinions that it is difficult to choose between them. But certainly the weight of authority, both text writers and decisions, is with the minority, namely, the dictum in *Ex parte Marx*, 86 Va. 40, in which it was laid down, that the violation of this statute was an offense for which the accused could be arrested on criminal warrant; the opinion of President Green in *State v. Baltimore, etc., R. Co.*, 15 W. Va. 370, holding under a statute almost identical with our own, that "Sabbath breaking" was a misdemeanor; and lastly the opinion of Prof. Minor in his synopsis of Criminal Law. Judge Buchanan traces this legislation from the earliest times, and shows that it has always been regarded as part of the criminal law of the state. At any rate, every layman in the state has felt that in violating the Sunday laws, he was breaking a criminal law, and when the manifest meaning of such a law is not violated, we think it always good policy to conform to the popular interpretation of the law. The Sunday laws are more likely to be observed if the Sabbath breaker is made to feel that he is a criminal in breaking them.